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HISTORY NEWS

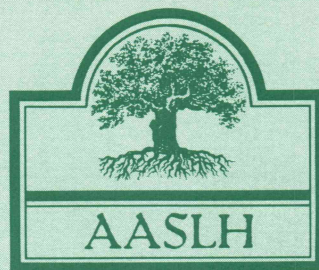
November/December 1988

Volume 43/Number 6

*Happy
Holidays*



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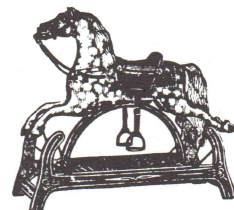
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Volume 43, 1988



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Herewith, a Yuletide photograph:
 Season's greetings from the staff!
 Elbowing in with shameless ease,
 Here we cluster, saying "Cheese!"
 It's Christmas time, and we're not sluggish—
 We are truly unhumbuggish—
 Strewing mistletoe and holly,
 Plotting hours of gladsome folly ...
 Bugling a classic carol,
 We gather round the cider barrel.
 We hope there'll be, this Yuletide pause,
 For every sock, a Santa Claus;
 We send, worldwide, to all our friends,
 Our wishes for best dividends
 In spirits that lift and effervesce—
 And peace, good will, and joyousness.

— Martha Strayhorn

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LETTERS

*Straightening the Pathway of
History*

The July-August 1988 issue of HISTORY NEWS contained two poignant and well-considered articles dealing with questions of professional ethics when preserving and interpreting facets of our North American culture. David Crosson's "Museums and Social Responsibility" and Renee Friedman's "Of Trees and Teacups: The Landscape as Artifact" are worth re-reading and having the staff and trustees alike read and discuss.

Both struck a cord that is repeatedly avoided by museum, staff, and trustees—that is, the level of historical accuracy that museums are willing to risk when preserving and interpreting the past. As one in both administration and interpretation, I know the problems presented when one strives to interpret the past, its artifacts, people, actions, and beliefs accurately to visitors.

Crosson's article dealt with a museum's responsibility in preserving and interpreting artifacts and practices of child-rearing in 1980's America. Part of the museum's collection policy and interpretive program dealt with crimes child-care providers committed against young people in that period of time, hence the question raised in the article of preserving, researching, and interpreting the "Warnock Boxes." Crosson's article was not about the horrors of those young people placed in the care of criminals. Crimes against children are neither an Iowa nor Midwest occurrence, but abuse against humans, both familial and institutional, has been and continues to be a part of our culture. Crosson asks us in the museum field to examine our responsibility and professional ethics in interpreting history for our present and future cultures, in exposing our cultures' artifacts, actions, and beliefs in the hope of better understanding the past and ourselves. To ignore the facts, in this case, how working America strived to care for

its children, and not to address the crimes committed, is complicity tantamount to sanctioning those crimes.

Crosson and the institution he represents have demonstrated their ability to compromise while maintaining integrity. As he asserts, museums and historical organizations must not abdicate their responsibility to help society remember events, actions, and beliefs we do not want to remember, and at the same time, they must remain sensitive to and honor their equal responsibility to respect the rights of human dignity. We all jump eagerly at the opportunity to help people remember progressive America. We must be equally cognizant and help people remember our human frailties and failures.

The significance of the July-August issue was increased with the printing of Renee Friedman's article, "Of Trees and Teacups," where the case of interpreting American history "warts and all" is made again. She explores how we in historic houses, open-air museums, or historic sites tend to mistreat our landscaped environment. As we stress accuracy in our multifaceted interpretive programs, why do we not equally stress interpretive values and accuracy in our interpretation of landscaping and environment. Painting with a broad brush, many historical organizations in the country are guilty of "tidying up" our historic landscapes according to our 1980's preferences. Like sweeping uncomfortable events of history under the rugs of non-interpretation, our tendency to do "looks better history," to soothe the senses of our visitors, trustees, or staff is equally damaging to the understanding of a different time and place.

We, who are assigned the responsibility of collecting, preserving, researching, and interpreting public history and those who govern our organizations need to take note of these two well-written articles. Thanks to these two professionals, their respective organizations, and AASLH

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for encouraging museums to provide an increasingly accurate, albeit at times unpleasant, view of ourselves.

ROBERT M. DRAKE
Site Manager
Forest History Center
Minnesota Historical Society
Grand Rapids, Minnesota

The Living-History Debate

I have just read David Peterson's article concerning living history in the September-October 1988 issue of HISTORY NEWS. In my opinion, Mr. Peterson raises many valid points concerning the practice of living history, especially first-person interpretation. I, too, have reservations concerning Jay Anderson's book, *Time Machines*, and perhaps many more sources than he mentions. The purpose of this letter is not to criticize but rather to suggest the debate be intensified.

I would suggest that Mr. Peterson attend the spring seminar of the Midwest Open Air Museums Coordinating Council. The questions he presents concerning quality of living-history programs are discussed extensively by practitioners of the *art*. The members of MOMCC are professionals who realize the boundaries of their interpretive technique. They do, however, make an effort to test new ideas and experiment. Mr. Peterson's comments and critique would be very useful.

I began my museum career as a volunteer living-history interpreter. I still participate in programs. I've seen the good, the bad, and the ugly. I've seen these qualities in *all* interpretive forms. There are economic reasons for museums to use living history—it brings people and their money. It may not be the way we want to do things, but it is becoming one of those facts of life—one that I didn't have to worry about when I began twelve years ago. The best example I have found in pursuing objective history through living history is that it is like "living the life of Christ"—you can only approach it. Please let the debate continue.

ANDREW GALLUP Director
Macon County Historical Society
Decatur, Illinois

Auction Accolades

Thank you to the AASLH members who participated in the first "Auction for Education" at the Rochester annual meeting in September. The \$4,775 raised to supplement the education budget will mean more and better services from the Association, and we can all be proud of everyone who donated items for sale, bid on the vast array of treasures assembled, and carried home something useful, beautiful, or fun.

The AASLH Education Committee thanks Patricia Hogan of the AASLH staff for her work in organizing the auction. Special credit goes to Elaine Challacombe, Jean Banker, Jan Guldbeck, and their colleagues at the Strong Museum who received, exhibited, hauled, and kept records on the more than 200 items.

Anyone with suggestions about the auction is welcome to send them to me as soon as possible:

Susan Miner
Wichita-Sedgwick County
Historical Museum
204 South Main
Wichita, Kansas 67202
Many thanks!

SUSAN MINER
Wichita-Sedgwick County Historical
Museum
Wichita, Kansas

Columbus, Indiana, Please

I would like to thank HISTORY NEWS DISPATCH for the very fine article on myself in the July 1988 issue. I believe James Summerville, who is no longer with AASLH, was responsible for the write-up. I was quite thrilled to read such an informative and in-depth article.

I would like to point out one little mistake that perhaps you could mention. Bartholomew County Historical Society is in Columbus, Indiana, not Lafayette.

Once again, thanks for a great article.

ROBERTA W. CIRANTINEO
Executive Director
Bartholomew County
Historical Society
Columbus, Indiana

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THE UNRELATED BUSINESS DEBATE:

WAIT UNTIL NEXT YEAR

by Anne Worley

While it is hard to imagine in this age of the 7,000-page tax code, there was once a day, long ago, when the unrelated business income tax, like computer telemarketing, was an idea whose time had not come. In the first half of this century, tax-exempt organizations availed themselves of virtually unlimited commercial opportunities under the "destination of income" theory. [*Trinidad v. Sagrada Order*, 263 U.S. 578 (1924); *Roche's Beach, Inc. v. Commissioner*, 96 F. 2d 776 (2nd Cir.1938).] Under this doctrine, profit-making activity was acceptable so long as that profit served the charitable purpose of the organization. In a backlash that rings familiar today, small businesses registered their complaints about such free-wheeling and tax-exempt competition. Congress responded in 1950 with the first unrelated business income tax (UBIT) laws. The final straw for small businesses seems to have come in that year when New York University School of Law became the owner of the largest noodle manufacturer in the country. The school received its downpayment for the enterprise from a group of donors and planned to repay additional bank financing debt with untaxed future profits. Pressure on Congress resulted in abandonment of the destination of income theory and adoption of a system designed to ensure fair competition between taxable and tax-exempt enterprises.

As the provision has matured through the two subsequent federal Internal Revenue Codes of 1954 and 1986, it has come to apply three requirements, which, if found in conjunction, result in imposition of the tax:

- The endeavor must be undertaken in such a manner as to constitute a "trade or business" for the exempt organization.
- The endeavor must be regularly carried on rather than a sporadic, infrequent exercise.
- The endeavor must not be substantially related to the charitable purposes for which the exempt entity is organized.

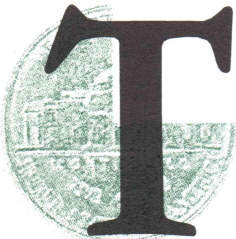
While this three-part test can be simply stated, the development of regulations, guidelines, and cases that clarify the meaning and application of the factors has become a complicated web. The exempt organization wishing to undertake a new activity is challenged with a difficult balancing task, complicated with the Internal Revenue Service's preference for avoiding bright lines and safe harbor regulations in the area.

A determination of unrelatedness results in taxation at the applicable corporate rate of any income so derived. For most organizations, the decision to file Form 990-T and pay any tax due settles the question. In more extreme cases, the profit-motivated endeavor can assume a proportion suffi-

cient to endanger the exemption itself. This unpleasant outcome can result when the IRS successfully asserts that an organization's charitable purpose is superseded by its entrepreneurial one. Such a loss of exemption has been rare in the past, and most of the cases reaching this result concerned tax shelter churches and overtly sham organizations.

As the economic and philanthropic climates in this country have changed since 1950, tax-exempt organizations have altered their means of doing business. Dwindling donations and increasing costs of operation required organizations to seek new means of funding budget deficits. On the leadership edge of this more flexible, if not more aggressive, policy is the tax-exempt health care industry. There, joint ventures, taxable subsidiaries that funnel passive income to exempt parents, and expansive interpretation of exceptions to the UBIT rules attracted hostile attention of competing small businesses, such as pharmacies, hearing aid companies, and general medical suppliers. In this atmosphere of uncertainty and rising complaint, all tax-exempt organizations are faced with the prospect of significant changes in the traditional approaches to their commercial activities. If past experience teaches anything, it is that the legislation designed to cure perceived abuses in a few areas of the tax-exempt sector will affect the wider population of exempt organizations, whether by design or inadvertence. In order to understand where these changes may lead, we should review existing rules with regard to the imposition of the unrelated business income tax.

A PERSPECTIVE



The unrelated business income tax (UBIT) is imposed by section 511 of the Internal Revenue Code of 1986, as amended. UBIT and other allied concepts are defined in section 512 of the code, while the nature of an "unrelated trade or business" is explained in section 513. Each of these code sections is subject to further clarification by the Treasury Regulations promulgated in connection with it and by the private and published rulings that apply the Code and Regulations to specific fact patterns. To a less significant extent, case law is available to establish guidelines for operation, although UBIT has not been an active generator of litigation compared to other areas of the federal tax law.

The IRS also uses its free Publication 598 *Tax on Unrelated Business Income of Exempt Organizations*, to explain application of the law in a concise format. An equally interesting publication is the IRS's annual *Exempt Organizations Continuing Professional Education Technical Instruction Program for 1988*, a 257-page educational manual produced for internal use in updating its agents on the latest law and new audit and enforcement plans. The section on UBIT in

this year's volume begins with the statement: "[t]he area of unrelated business taxable income continues to have a high profile." The section goes on to focus primarily on the issues raised by nonprofit advertising income from publications, but the IRS's express recognition of the UBIT debate probably signals an increased emphasis on that area in audits.

At the cornerstone of any analysis is the fact that UBIT is not triggered unless the exempt organization is engaged in an unrelated *trade or business*. For example, the mere fact that greeting cards are sent along with funding requests to potential donors has been found insufficient to constitute a separate trade or business. Although the exempt organization was forced to defend its actions in litigation, the court ruled that the greeting cards were incidental to the primary charitable solicitation. Additionally, the activity was found to represent no unfair competition to taxable greeting card producers. [*Hope School v. U.S.*, 612 F.2d 298 (7th Cir., 1980).] In order to clarify further this "distribution of low cost articles" exception, Congress enacted section 513(h)(1)(A) as a part of the Tax Reform Act of 1986, which basically adopts the standards previously imposed with regard to such distributions.

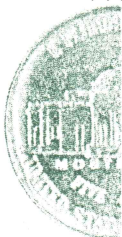
Additional clarification of the exception is found in recent case law that establishes the distinction between true solicitation and disguised profit motive. In [*Veterans of Foreign Wars, Department of Michigan v. Commissioner*, 89 T.C. 7 (1987)], the Tax Court ruled that the organization was subject to taxation on income from its Christmas card sales because the solicitation was in truth an activity carried on with a profit motive. The material accompanying the cards stated that they should not be considered unsolicited (and therefore a gift) but rather that they were to be paid for at prescribed prices. Reminders were sent to recipients who did not respond at once. The court distinguished the outcome in *Hope School* by focusing on the lack of competition in the earlier case compared with a showing of competition in the case of the veterans' organization. In trying to harmonize the holdings of these two cases, the tax-exempt organization that wishes to engage in the distribution of low cost items is faced with a decision as to whether it is seeking to maximize donations or maximize profits. The answer may not always be obvious.

In a similar vein, the university that used its tennis facilities every summer to run a ten-week public tennis club operated by members of the athletic department was engaged in a taxable enterprise. The activity was not merely incidental to the charitable and educational purposes of the organization. [Revenue Ruling 80-295, 1980-2 C.B. 196, amplifying Revenue Ruling 76-402.] The general public could join the club, and the university furnished more than just its facilities by having its staff schedule matches and generally oversee the use. Similarly, rental of a university stadium to a professional football team for summer workouts was a taxable enterprise because it did not further the institution's charitable purposes. [Revenue Ruling 80-298, 1980-2 C.B. 197.] The lease could not be sheltered by the passive income

"At the cornerstone of any analysis is the fact that UBIT is not triggered unless the exempt organization is engaged in an unrelated trade or business."

exception because services were included in the lease package; thus, the activity lost any claim to passive status.

In each of the cases above, while the activity undertaken was of a seasonal nature, it was still considered to be carried on regularly. This second of the UBIT requirements, *regularity*, is subject to a broad definition by the IRS. While an annual fund raiser such as a charity auction or gala will not be considered regularly carried on [Treas. Regs., 1.512-1(c)(2)(iii)], an activity similar to one undertaken by a taxable entity on a seasonal basis, such as holiday merchandising or summer sports camps, may give rise to UBIT in spite of its intermittent nature. [Tres. Regs., 1.513-1(c)(2)(i).] The Regulations clarify the rule by stating, "exempt organization business activities which are engaged in discontinuously or periodically will not be considered regularly carried on if they are conducted without the competitive and promotional efforts typical of commercial endeavors" [Treas. Regs., 1.513-1(c)(2)(ii).]



If the activity qualifies as a trade or business and is regularly carried on, it may still escape taxation if it is substantially related to the organization's exempt purpose. Such a relationship exists only where there is a causal connection between the activity and the purpose, so that the activity contributes importantly to the achievement of the purpose. [Treas. Regs., 1.513-1(d)(2).] This requirement has been used to allow the only hospital in a small town to engage in the operation of a pharmacy, making sales not only to the hospital's own patients, but also to private patients of local physicians and to the general public. The non-patient sales were found to be substantially related to the hospital's purpose of providing medical services by attracting and retaining physicians in the rural area. [*Hi-Plains Hospital v. U.S.*, 670 F.2d 528 (5th Cir. 1982).] It is noteworthy that the rural hospital's activities did not compete with similar for-profit pharmacies, for there were none.

By way of contrast, the work performed by members of a religious organization was ruled unrelated to its exempt purpose of providing drug rehabilitation because, although the labor had certain rehabilitative effects, it served primarily to meet the material need of the laborers. [*Shiloh Youth*

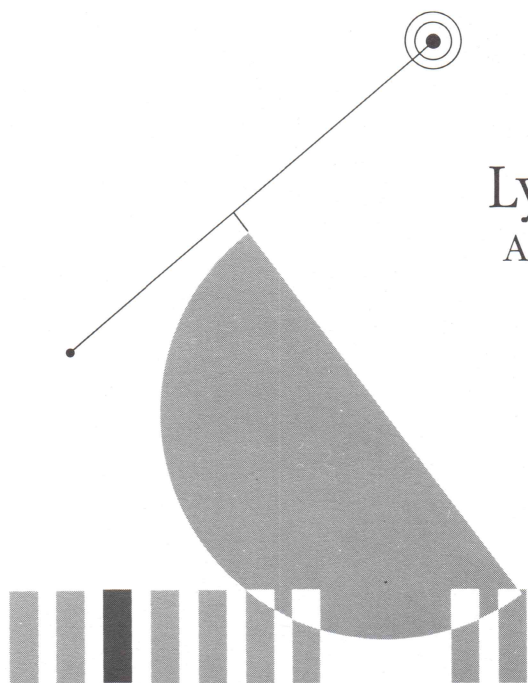
Revival Centers v. Commissioner, 88 T.C. 565 (1987).] Such determinations continue to be made on a case by case basis, leaving exempt organizations to compare their proposed activities with examples given in the Regulations and fact specific private letter rulings and cases. If the activities differ substantially from these guidelines, there can be real and appropriate trepidation involved in the decision to go forward.

The frustration that taxable businesses feel toward the somewhat nebulous nature of the substantially related requirement is best gauged by the fact that their lobbying efforts caused participants in the recent Congressional hearings to consider abandonment of the concept entirely. The intervention of Secretary Chapoton of the Treasury Department cooled the fervor for elimination of the substantially related test, but lingering displeasure with the concept could mean "fine tuning" of it in the near future. As it stands now, the IRS continues to look at the size and extent of activities in making the determination. Thus, an activity is vulnerable to taxation even if a substantial relationship can be shown, when it is conducted on a scale larger than necessary to accomplish the related charitable purpose. [Treas. Regs., 1.513-1(d)(3).]

Similarly, an unrelated activity carried on within a larger framework of related activities will be broken out for separate analysis according to the so-called "fragmentation" rule. [IRS Code, 513(c); General Counsel's Memorandum 35146.] Carrying the fragmentation concept even further, through a series of published and private letter rulings and related general counsel memoranda, the IRS has established a requirement that gift shop items be categorized on an individual basis for relatedness to the exempt purpose. [Revenue Ruling 73-105, 1973-1 C.B. 264; Private Letter Ruling 8605002; Private Letter Ruling 8328009; General Counsel's Memorandum 38949.] The difficulty that can occur in applying the item-by-item analysis is obvious in GCM 38949, which breaks one museum's shop inventories into eleven categories and further acknowledges that "a particular item could fall into several categories." Each category is then subjected to its own relatedness test.

A synthesis of these pronouncements shows that items which are reproductions of the selling museum's collections are related to the museum's educational purpose. Items that are similar to collection pieces and which carry educational labels or printed material are also related. In contrast, a T-shirt or shopping bag that simply carries the organization's logo is unrelated. It is promotional rather than educational in nature.

The distinction between educational and promotional items has brought us the related dish towel and the unrelated teapot. [Private Letter Ruling 8328009.] The dish towel is decorated with reproductions of museum exhibits and thus is educational. The teapot, which is not a reproduction of an item in the museum's collection, can only redeem itself by acquiring "descriptive literature explaining [its] historical or artistic significance." Thus merely evocative items of



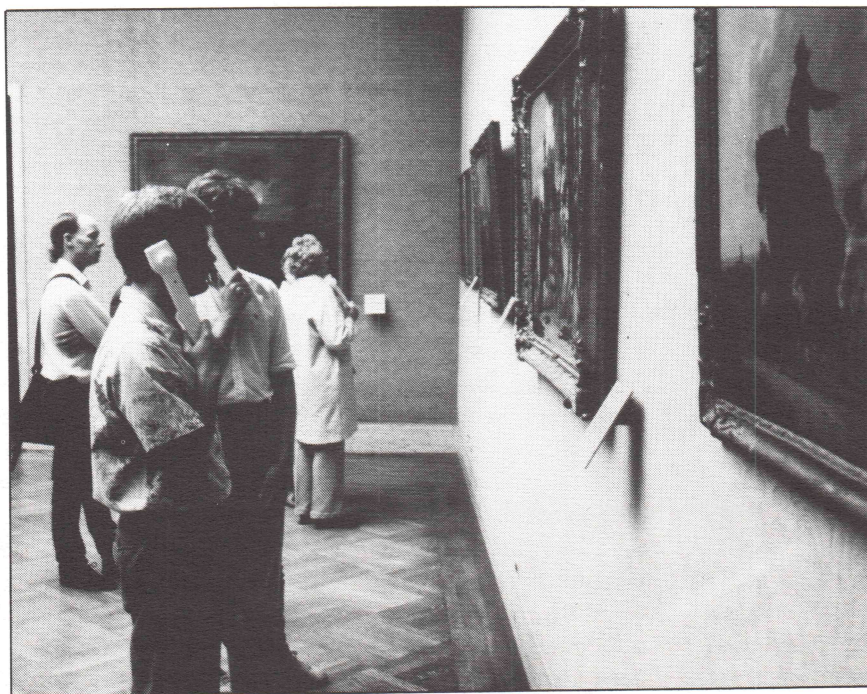
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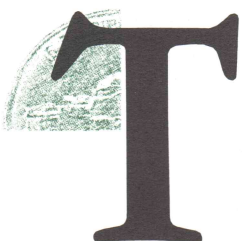
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"... an unrelated activity carried on within a larger framework of related activities will be broken out for separate analysis according to the so-called 'fragmentation' rule."

utilitarian or ornamental use are generally unrelated. This fairly clear distinction is then muddled by the IRS's determination that evocative children's toys are related because they play "an inherent instructional role, because they stimulate an appreciation on the part of children in more traditional play items that were prevalent in previous eras." Juvenile evocation of history is related to an educational purpose, while its adult counterpart is not.

THE EXCEPTIONS

hese three factors in the UBIT analysis offer only the basic framework for planning fundraising activities. Once an activity is found to be unrelated and to be generating income for the tax-exempt entity engaging in it, there are still a number of exceptions to be considered before the imposition of a tax on receipts. Some of the exceptions relate to specific types of endeavors not usually relevant to historical societies or museums, such as agricultural fairs, trade shows, and shared hospital services. These exceptions will be eliminated from our discussion, although they may be found in the IRS Code section 513(d) and (e).

On the express theory that traditional, passive sources of income pose little threat of competition to taxable businesses, Congress did not tax such income. Among the passive income sources excluded from the computation of taxable income are dividends, interest and annuities, some amounts received from lending securities, royalties (including mineral royalties other than certain working interests), and rents. The computation becomes more complicated in the case of mixed leases of real and personal property and real property rented with the provision of associated services. Income from research grants or contracts is excluded if it is traditional, noncommercial research. If commercially sponsored research is conducted in the public interest, with results made publicly available in a timely manner, it, too, may be excluded.

The passive income exception does not extend, however, to the practice of borrowing funds to make passive invest-

ments, the debt on which can be serviced with the resulting income. IRS Code section 514 provides that income from debt-financed property is taxable, based upon a ratio of debt to basis in the property. Gifts and bequests are not included in the definition of debt-financed property, nor is property used in a manner related to the organization's exempt purpose or held for future expansion. There are both geographic and time limitations, however, to this "neighborhood land" exception.

Any trade or business for which substantially all of the work is carried on by volunteers is not considered taxable, nor is a trade or business carried on primarily for the convenience of the members, students, patients, officers, or employees of the organization. Similarly, the sale of items received by donation is not a taxable enterprise, nor is the distribution of low cost articles, if such distribution is incidental to the solicitation of charitable contributions. [IRS Code 513(a) and (h).] The conducting of bingo games within strictly prescribed guidelines can also be exempt from UBIT. [IRS Code 513(f).]

While these exceptions seem reasonably straightforward, their implementation has proven a challenge to the IRS and a source of confusion to exempt organizations. By way of example, the volunteer exception was used to shelter profits from the first printing of a cookbook produced from donated recipes by an art museum's volunteers. IRS ruled that prepublication volunteer efforts could be taken into consideration in assessing the taxable nature of earnings on a year-by-year basis, so long as books from the first printing remained available for sale. [Private Letter Ruling 8211002.] Under such a rule, it is likely that a complicated record-keeping system will be necessary when later printings are available along with the last of the initial run. Such records could be central to determining whether "substantially all" of the labor involved in any tax year is still attributable to volunteer effort. It would seem that one lesson to be learned from this private ruling (which like all such private rulings is considered applicable only to the recipient organization) is to consider large first printings of the volunteer publications if they have a good prospect for success.

Equally challenging is the application of the convenience exception. There is authority for the proposition that operation of a dining room, cafeteria, and snack bar for use by museum staff and visitors is related to the organization's exempt purpose. [Revenue Ruling 74-399, 1974, C.B. 172; Private Letter Ruling 8202001; Private Letter Ruling 8145002.] This exception does not expand, however, to include an operation that is larger than necessary and which acts as a public restaurant within an exempt facility. It is interesting to speculate on the treatment of receipts from the museum restaurant that becomes a favorite spot for downtown business luncheons. The accounting procedures required to distinguish between visitor and nonvisitor use could prove difficult. Sales of convenience items, such as film, maps, and batteries in the museum gift shop also present complicated analysis.

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"A wide range of options is being discussed, but at this point, the only likely bet is that some change is on the way."

Expending time unraveling the intricacies of the convenience exception may be effort wasted, however. This exception has drawn the particular attention of the reform movement. It is likely that whatever changes in the unrelated business income tax may be enacted in the coming year, the convenience exception will be affected. The outcome may be as drastic as its elimination altogether or as simple as the imposition of a ceiling on the price of items that may be sold without incurring tax. A wide range of options is being discussed, but at this point, the only likely bet is that some change is on the way.

THE COMPETITION DEBATE

To understand the likely direction of change, it is necessary to look first at complaints from small businesses. The Business Coalition for Fair Competition has reported the following facts:

- While 400,000 exempt organizations file form 990, only 27,000 (7 percent) file form 990-T reporting unrelated business income.
- Of the annual gross revenues in excess of \$300 billion received by exempt organizations in 1986, \$56 million in unrelated business income tax was paid, one-half of which came from two tax cases.
- Charles Rangel (D-N.Y.) stated lost revenue from unreported UBIT could be as high as \$20 billion.

The Coalition has suggested that a reversal of presumptions is appropriate so that "[w]herever profits result from the regular, commercial activities of tax-exempt organizations, and there exists a for-profit competitive market for those goods and services, they should be viewed as taxable." [Business Coalition for Fair Competition, "Facts About the Unfair Competition Issue."] This "taxable presumption" would be rebuttable under the Coalition's plan, but the manner and extent of the activity rather than its purpose would

be the focus of analysis. With such statistics before this past summer's Congressional hearings, the fact that strong measures were considered is hardly surprising.

While Lloyd Bentsen (D-Texas) announced that his Senate Finance Committee plans no immediate action with regard to UBIT, the House Ways and Means Subcommittee on Oversight under the leadership of Chairman J.J. Pickle (D-Texas) has developed some recommendations. While these draft recommendations had not been adopted by the full committee at this writing, they contain several provisions of potential importance to museums and historical societies. Chief among these proposed changes is the taxation of all income from gift shop and catalog sales. To soften the blow, this proposed option would make exceptions for items that are under \$15 in value, for reproductions from the selling museum's collections, and for items that are both related to the organization's purposes and are educational. Existing exceptions for activities that are not regularly carried on, which are staffed wholly by volunteers, or which deal solely in donated goods would also continue. Royalty income would remain exempt only if derived from traditional research activities or nonworking property interests.

Initially, these proposed changes and retained exceptions seem a small step from existing law. Gone, however, is any type of express convenience exception. The analysis of restaurant and snack bar income under these proposals could result in their taxation. The Oversight Subcommittee seems committed to careful evaluation of every category of exempt activity. The current hiatus in hearings and legislative debate can be an opportunity for careful consideration of funding sources and activities, particularly in light of the fact that both Senate and House conferees voiced their belief that too little is publicly known about how the nonprofit sector operates and what sort of revenue it generates. As Representatives Archer, Schulze, Rostenkowski, and Pickle made clear in their October 14th letter to IRS Commissioner Gibbs, even without new legislation, changes can be instituted. These congressmen, on behalf of the Oversight Subcommittee, called for greater specificity in forms 990 and 990-T, including an activity by activity demonstration of relatedness to exempt purpose, disclosure of income attributable to each such activity, and descriptions of any activity, whether related or not, if not previously reported to the IRS. In such an environment, it is essential that tax-exempt organizations provide the information that will enable legislators to make accurate assessments and develop workable and even-handed applications of resulting law. ♦

Anne Worley is associated with the century old law firm of Cantey & Hanger in Fort Worth, Texas, where she is active in advising a variety of nonprofit organizations. Worley has been a frequent speaker at programs sponsored by AASLH, the Texas Historical Commission, and area arts councils and is a faculty member of the Santa Fe Museum Management Seminar. She holds a Master of Arts degree in Museum Science and before beginning her legal education served as the Curator of Textiles at the Panhandle-Plains Historical Museum, Texas' oldest and largest state museum.



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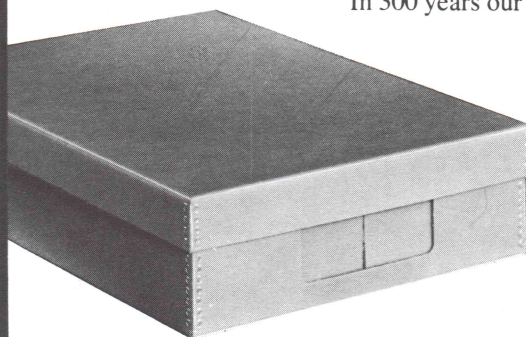


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T[®] R[®] A[®] D[®] E[®] M[®] A[®] R[®] K[®] LAW FOR MUSEUMS AND HISTORICAL ORGANIZATIONS

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Many museums and historical societies manufacture or market products that they wish to have identified with their institutions. This is accomplished by labeling the products with appropriate names, logos, or symbols, commonly known as “trademarks.”

Although modern trademark law is a relatively new development, its historical antecedents reach back to medieval England. In those days craft guilds often required members to place their individual marks on the products they produced so that, in the event a product proved defective, the guild could trace its origins to a particular craftsman and impose appropriate sanctions. Thus, the use of marks enabled the guild to maintain the integrity of its name. Moreover, merchants would often affix marks to their products for purposes of identification. Should the product be stolen or misplaced, the merchant could prove ownership by reason of the mark.

The use of marks for identification would have worked well in an ideal society where all the citizens led principled and moral lives, but such was not the case. Unscrupulous merchants quickly realized that easy money could be made from the use of another's mark, or one substantially similar. They could more readily sell their own shoddy products by affixing to them marks that belonged to quality manufacturers.

In response to such problems of consumer fraud, the first trademark laws were developed in the United States. Ini-

tially, the emphasis was on preventing one person from passing off his or her product as that of another. In contrast, modern American law focuses upon whether one mark is sufficiently similar to another to cause confusion in the minds of the buying public. Thus, the emphasis has shifted from the subjective intent of a dishonest manufacturer or merchant passing off goods as those of another to the objective determination of consumer confusion.

Despite these changes, the essential purpose of trademarks and trademark law has changed little since the days of craft guilds. Trademarks still function primarily as a means of identifying the sources of particular products. Moreover, trademark laws are designed to enable the trademark proprietor to develop good will for the product, as well as to prevent another party from exploiting that good will—regardless of whether that exploitation is intentional or innocent.

A RECOGNIZABLE MARK

What, exactly, is a trademark? A trademark may be defined as any word, name, symbol, device, or any combination thereof adopted and used by a manufacturer or merchant to identify one's own goods and distinguish them from those sold by others. The key concept is that the trademark must be *distinguishable*. In order to secure trademark protection,

Technical Leaflet

Technical Information Service

American Association for State and Local History

A Guide to Resource Organizations

Joy B. Dunn

Sheila Riley

The AASLH Technical Information Services Department handles in excess of 1,500 inquiries yearly, many of which are referred to other organizations for more specific information. In order to assist our membership, the following list identifies a core group of national resources representing ten areas in which inquiries are most often received.

AASLH recognizes the existence and services of many other museum and history-related organizations; however, the restrictions of space allow only a limited number to be included at this time. Additional information about organizations whose services would benefit AASLH membership is invited.

Every attempt has been made to provide the reader of this technical leaflet with current information. The authors and AASLH neither endorse nor assume responsibility for any particular organization, service, or product.

Joy B. Dunn is Managing Editor for AASLH Press, and Sheila Riley is Acting Director of the AASLH Technical Information Services Department.

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CS - Consultant Services
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EP - Educational Programs
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CONSERVATION

American Institute for Conservation of Historic and Artistic Works
1400 16th Street, NW
Suite 340 Washington, DC
20036 (202) 232-6636
AM, BK, CS, CT, GR, JN, NL

Image Permanence Institute
RIT City Center
50 West Main Street
Rochester, NY 14614
(716) 475-5199
BK, CS, CT, EP

National Institute for the Conservation of Cultural Property
Arts and Industries Building-2225
Smithsonian Institution
Washington, DC 20560
(202) 357-2295
AM, AV, BK, CT

Textile Conservation Center
Museum of American Textile
History
800 Massachusetts Avenue
North Andover, MA 01845
(617) 686-0191
CS, EP, NL

ETHNIC STUDIES

American Indian Institute
University of Oklahoma
555 Constitution Avenue
Norman, OK 73037
(405) 325-4127
CS, EP

African American Museums Association
P.O. Box 50061
Washington, DC 20004-0061
(202) 783-7744
AM, EP, NL

Association for the Study of Afro-American Life and History
1407 14th Street, NW
Washington, D.C. 20005
(202) 667-2822
AM, AV, BK, CT, EP, ES, JN, MG, NL

Balch Institute for Ethnic Studies
18 South 7th Street
Philadelphia, PA 19106
(215) 925-8090
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Center for Migration Studies
298 Flagg Place
Staten Island, NY 10304
(718) 351-8800
BK, CS, CT, EP, JN, MG, NL

Immigration History Research Center
University of Minnesota
826 Berry Street
St. Paul, MN 55114
(612) 627-4208
AM, BK, CT, GR, MG, NL

North American Indian Museum Association
P.O. Box 442
Salamanca, NY 14779
(716) 945-1738
AM, CS, NL

FOLKLORE/FOLKLIFE

American Folklife Center
Library of Congress
Washington, DC 20540
(202) 287-6590
AV, CT, EP, JN, NL

American Folklore Society
1703 New Hampshire Avenue, NW
Washington, DC 20009
(202) 232-8800
AM, BK, JN, NL

Country Dance and Song Society of America
17 New South Street
Northampton, MA 01060
(413) 584-9913
AM, AV, BK, CT, EP, MG, NL

National Association for the Preservation and Perpetuation of Storytelling
P.O. Box 309
Jonesboro, TN 37659
(615) 753-2171
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GENEALOGY

Bureau of the Census
U.S. Department of Commerce
Washington, DC 20233
(301) 763-4040
CT, NL

National Genealogical Association
4527 17th Street, North
Arlington, VA 22207-2363
(703) 525-0050
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GRANTS

Institute of Museum Services
1100 Pennsylvania Avenue, NW
Washington, DC 20506
(202) 786-0536
GR

National Endowment for the Arts
1100 Pennsylvania Avenue, NW
Washington, DC 20506
(202) 682-2000
GR, NL

National Endowment for the Humanities
1100 Pennsylvania Avenue, NW
Washington, DC 20506
(202) 786-0438
GR, NL

National Historical Publications and Records Commission
National Archives Building
Washington, DC 20408
(202) 523-5384
GR, NL

National Science Foundation
Public Information Office
1800 G Street, NW
Washington, DC 20550
(202) 357-9498
GR

HISTORIC PRESERVATION

Advisory Council on Historic Preservation
1100 Pennsylvania Avenue, NW
Room 809
Washington, DC 20004
(202) 786-0503
CS, EP

American Institute of Architects
1735 New York Avenue, NW
Washington, DC 20006
(202) 626-7300
AM, AV, BK, CS, EP, ES, GR, JN, MG, NL

American Society of Interior Designers
Historic Preservation Committee
1430 Broadway, 22nd Floor
New York, NY 10018
(212) 944-9220
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American Society of Landscape Architects
Committee on Historic Preservation
1733 Connecticut Avenue, NW
Washington, DC 20009
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Association for Gravestone Studies
46 Plymouth Road
Needham, MA 02192
(617) 444-6263
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Association for Preservation Technology International
P.O. Box 8178
Fredricksburg, VA 22404
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National Register of Historic Places
1100 L Street, Suite 6209
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National Trust for Historic Preservation
1785 Massachusetts Avenue, NW
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Society of Architectural Historians
1232 Pine Street
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Technical Preservation Services Branch
Preservation Assistance Division
National Park Service
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Washington, DC 20013-7127
(202) 343-4747
BK, CS, CT, GR

HISTORY/AMERICAN STUDIES

American Association for State and Local History
172 Second Avenue, North
Suite 102
Nashville, TN 37201
(615) 255-2971
AM, AV, BK, CS, CT, EP, ES, GR,
MG, NL

American Craft Council
40 W. 53rd Street
New York, NY 10019
(212) 956-3535
AM, EP, FT, MG

American Historical Association
400 A Street, SE
Washington, D.C. 20003
(202) 544-2422
AM, GR, JN, NL

American Studies Association
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2140 Taliaferro Hall
College Park, MD 20742
(301) 454-2533
AM, JN, NL

Coordinating Committee on Women in the Historical Profession
1737 Vaughn Drive
Manhattan, KS 66502
(913) 539-2837
AM, ES, JN, NL

Costume Society of America
55 Edgewater Drive
P.O. Box 73
Earleville, MD 21919
(301) 275-2329
AM, EP, GR, JN, NL

Early American Industries Association
P.O. Box 2128
Empire State Plaza Station
Albany, NY 12220
(518) 473-1746
AM, GR, JN, NL

National Council on Public History
403 Richards Hall
Northeastern University
Boston, MA 02115
(617) 437-2762
AM, BK, CT, EP, JN, NL

National History Day
11201 Euclid Avenue
Cleveland, OH 44106
(216) 421-8803
EP, NL

Oral History Association
1093 Broxton Avenue, #720
Los Angeles, CA 90024
(213) 825-0597
AM, BK, CT, JN, NL

Organization of American Historians
112 N. Bryan Street
Bloomington, IN 47408
(812) 335-7311
AM, BK, CT, EP, JN, MG, NL

Popular Culture Association
Popular Culture Center
Bowling Green University
Bowling Green, OH 43403
(419) 372-2981
AM, JN, NL

Society for American Archaeology
808 17th Street, NW
Suite 200
Washington, DC 20006
(202) 223-9774
AM, BK, CS, CT, EP, ES, JN, NL

The Victorian Society in America
219 South 6th Street
Philadelphia, PA 19106
(215) 627-4252
AM, BK, EP, JN, NL

LIBRARY/ARCHIVES

American Library Association
50 East Huron Street
Chicago, IL 60611
(312) 944-6780
AM, AV, BK, CS, CT, EP, ES, GR,
JN, MG, NL

Association for Information and Image Management
1100 Wayne Avenue
Silver Spring, MD 20910
(301) 587-8202
AM, AV, BK, CT, EP, MG, NL

National Archives
8th and Constitution Avenue
Washington, DC 20408
(202) 523-3134
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National Association of Government Archives and Records Administrators
c/o Bruce Dearstyne, Executive Director
New York State Archives
10A75 Cultural Education Center
Albany, NY 12230
(518) 473-8037
AM, EP, NL

Society of American Archivists
600 S. Federal, Suite 504
Chicago, IL 60605
(312) 922-0140
AM, AV, BK, CT, EP, JN, NL

MUSEUMS

American Association of Museums
Suite 200
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Washington, DC 20005
(202) 289-1818
AM, AV, BK, CT, EP, GR, MG, NL

**American Association of Youth
Museums**
70 P Street
Salt Lake City, UT 84103
(801) 359-4350
AM, EP, NL

**Association for Living Historical
Farms and Agricultural Museums**
National Museum of American
History
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Smithsonian Institution
Washington, DC 20560
(202) 357-2095
AM, NL

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Exhibition Services (SITES)**
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Washington, DC 20560
(202) 357-3168
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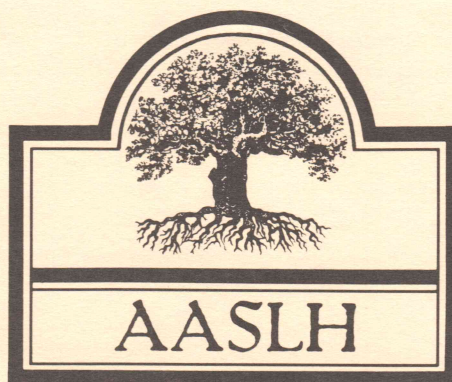
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one must devise a distinctive mark.

The most distinctive marks are purely arbitrary or fanciful—that is, they have no meaning or connotation other than that which identifies the source of a particular product. For example, the trademark *Kodak* to identify a brand of cameras is purely arbitrary. Less distinctive are trademarks having other meanings, such as the trademark *Shell* to identify gasoline. Although such trademarks as *Shell* are not purely arbitrary, they are nevertheless afforded substantial protection since the other meaning bears no resemblance to the product identified.

KINDS OF TRADEMARKS

Generic and *descriptive* trademarks are not considered distinctive. A generic trademark merely identifies the product for what it is. Thus, the use of the trademark *Beer* to identify beer is generic. Similarly, a descriptive mark merely characterizes the attributes or qualities of the product. For example, the trademark *Raisin Bran* to identify a cereal is descriptive since it simply describes the ingredients.

Generic marks are never afforded trademark protection. Descriptive trademarks, however, may be protected under limited circumstances. A descriptive mark may be protected if the proprietor of the mark can prove that it has acquired a *secondary meaning*. Secondary meaning will exist when the public no longer connects the words of the trademark with their literal dictionary meaning, but rather with a unique product. For example, *TV Guide* has probably acquired a secondary meaning as the mark of a particular publication that contains television program listings and topical articles about the television industry.

In the *Leathersmiths of London* case in the mid-1980s, however, the question was whether the name *Leathersmiths of London* was a protected trademark. The court held that the word “leathersmith” is generic, at least when used to describe someone who is in the business of working leather, and, therefore, is not entitled to trademark protection.

Even though considered distinctive, some trademarks are nevertheless prohibited by statute or public policy. Trademarks that are considered obscene or scandalous are generally denied trademark protection. Similarly, trademarks that are deemed deceptive and misleading, such as the mark *Idaho potatoes* to identify potatoes produced in some area other than Idaho, are also denied protection.

PROTECTING A TRADEMARK

In order to secure trademark protection, it is not sufficient merely to adopt a distinctive trademark. The trade-

mark must be *used*. A trademark is deemed “used” when it has been placed in any manner on the product, its containers, the displays associated with it, or on any of the tags or labels affixed to the product. Thus, it is not always necessary that the trademark actually be physically affixed to the goods. So long as the trademark is associated with the product at the point of sale (and in such a way that the product can be readily identified as coming from a particular manufacturer or source), the trademark may be protected.

The mere listing of a trademark in a catalogue, the ordering of labels bearing the trademark, the use of the trademark on invoices, or the exhibition of trademarked goods at a show, however, may not be sufficient in and of themselves to constitute use, since the use of the trademark was not associated with the point of sale. To ensure trademark protection, the trademark proprietor would be well advised to affix the trademark physically to the product. In this way, the product is certain to bear the trademark when it is sold.

LOSS AND INFRINGEMENT

Use is a prerequisite to trademark protection; however, some forms of use may result in the loss of a trademark. A number of well-known trademarks, such as *Aspirin*, *Thermos*, and *Escalator*, have been lost as a result of improper usage. Generally, trademark protection is lost because the mark is used in some capacity other than as an adjective modifying a noun. When a trademark is used as a noun or a verb, it no longer functions to identify the source of the product, but rather becomes the name of the product itself. At that point, the mark becomes generic and not subject to protection.

Once the trademark has been adopted and used, it falls within the purview of common-law trademark protection. Common law protects the trademark proprietor against someone else subsequently using a trademark that is confusingly similar to that of the proprietor. (Common law is that body of law developed from court decisions rather than by state or federal statutes. Its advantage in this situation is that you do not need to take any action with any government agency to have protection for your trademark.)

This raises the question of when trademarks are considered to be confusingly similar. Generally, trademarks are regarded as confusing if they are similar in sound or appearance, particularly if they are affixed to similar products or if those products are marketed in the same or similar geographic areas. If, on the other hand, two products bearing similar trademarks are not related or are marketed in different geographic areas, there may not be any infringement.

Thus, a business that distributes its product solely in the Northwest could probably adopt and use a trademark already used by a business distributing its product solely in the state of Maine, provided the mark of the Northwest business does

not adversely affect the value of the trademark used by the Maine company. Moreover, a northwestern toy manufacturer could probably adopt and use a trademark used by a northwestern chainsaw manufacturer. In these situations, infringement may not be established since it is unlikely that the use of the mark by the toy manufacturer would confuse the chainsaw purchasers. Again, however, appropriation of another's trademark may be considered wrongful if the use, even by a noncompeting business, would dilute the value of the mark to the original owner.

When a trademark has been infringed upon, the trademark proprietor may sue the infringing party for monetary damages or for an injunction prohibiting the infringing use, or sometimes for both. Monetary damages may be measured either by the plaintiff's losses resulting from the infringement or by the defendant's profits. In some exceptional circumstances, where the defendant's conduct is determined as willful and flagrant, the plaintiff may also be entitled to punitive or exemplary damages, as well as attorney's fees.

REGISTERING A TRADEMARK

Thus far this discussion has revolved around the trademark protection afforded by the common law; however, the trademark proprietor may procure greater protection under federal and state statutes. The federal statute governing trademarks is known as the Lanham Act. The Lanham Act does not function to grant trademark rights (since those are secured by the common-law principles discussed earlier), but rather to provide a central clearinghouse for existing trademarks via registrations.

In order to obtain a federal registration of a trademark, you must first possess a valid common-law trademark—that is, the trademark must be both distinctive and in use. In addition, the product to which the trademark is affixed must be sold, shipped, or otherwise involved in interstate commerce. And, finally, as trademark proprietor, you must provide the Patent and Trademark Office with a written application, a drawing of the trademark in compliance with the detailed specifications of the trademark commissioner, five specimens or facsimiles of the trademark as it is actually affixed on—or in connection with—the goods, and a filing fee of \$200.

If the examining officer at the Patent and Trademark Office accepts your application, the trademark will appear shortly thereafter in the *Official Gazette*. Any person may object to the proposed registration within thirty days after it has appeared in the *Official Gazette*. If nobody objects to the registration, or if any objections are found to be without merit, you, as trademark proprietor, will be issued a certificate of registration. At that point, you receive certain benefits and rights in addition to those afforded by common law.

BENEFITS OF REGISTERING

First, the registration enables the proprietor to use the symbol ® in conjunction with the trademark, which may well deter others from using the mark. Second, registration is established evidence of the registrant's right to the exclusive use of the trademark. Finally, a registered trademark that has been in continuous use for a period of five years may become incontestable upon the filing of an appropriate form and the payment of a filing fee of \$10 per classification.

Thus by registering the trademark, the proprietor may secure rights superior to those of a prior but unregistered user, but only if the original user does not object to the registrant's use within five years of registration.

A trademark remains in effect for a period of twenty years and may be renewed in additional twenty-year increments by filing an application for renewal at least six months prior to the expiration of the existing twenty-year term.

Trademarks can also be registered under state law. The state trademark statutes generally grant rights similar to those of the Lanham Act except that those rights do not extend beyond the borders of the state.

In order to obtain trademark protection under state law, the trademark proprietor must file a trademark application with the appropriate state officer, along with documentation similar to that required by the Lanham Act. The number of examples of the mark to be furnished may vary from state to state, and the registration fee may also be different.

Obviously, registration can be quite beneficial to a museum or historical society that has invested a lot of time, money, and energy in developing a reputation for quality products. Procuring trademark protection on either the state or federal level, however, may require a considerable amount of time and skill. In this regard, an attorney may prove invaluable. First of all, an attorney can determine whether the benefits to be derived from registration justify the expense. (The total costs for trademark registration usually run about \$1,000, not counting artist's fees for drawings.) Second, an attorney can research a trademark index to determine if there are any conflicting marks. And finally, an attorney can complete the application and deal with any problems that may occur while it is being processed for registration.

If you are interested in contacting attorneys who specialize in trademark work, you should consult the yellow pages of the telephone directory (look under "Patent and Trademark Attorneys") or ask your state bar association for recommendations. ♦

Leonard D. DuBoff, is a professor of law at Lewis and Clark Law School, serves as counsel to the law firm of Joseph, Babener, and Carpenter in Portland, Oregon, and is a member of the bars of both Oregon and New York. DuBoff is the author of numerous books in the field, including the most authoritative text, The Deskbook of Art Law and its 1984 Supplement. He has been a speaker at AASLH annual meetings for several years. This article is copyrighted © 1988 by the author and is reprinted here with his permission.



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THE TEXAS SCHOOL BOOK DEPOSITORY BUILDING: PRESERVING THE DARK SIDE OF HISTORY

by Richard West Sellars

From a sixth floor corner window of the Texas School Book Depository Building in Dallas, the traffic below seems surprisingly close—a slow-moving car makes an easy target. Lee Harvey Oswald had the same view as he crouched at this sixth floor window to watch the presidential motorcade approach on Houston Street and turn down Elm Street, passing through Dealey Plaza. Then he shot and killed President Kennedy.

With the assassination on November 22, 1963, ordinary urban features here on the west edge of downtown Dallas suddenly became infamous landmarks, known worldwide—the grassy knoll, the triple underpass, the School Book Depository. Centered around Dealey Plaza, this area forms a kind of amphitheater—open to the west, ringed on other sides by buildings of medium height, including the depository on the north. This was the stage on which “Camelot” ended.

In November 1963, the sixth floor of the depository was a single, large storeroom almost completely filled with boxes of school books, which provided Oswald ample seclusion while he fired shots from the window. Following the assassination, the room remained closed to the public and was virtually unchanged from its 1963 appearance. Now, a quarter of a century after the assassination, the Dallas County Historical Foundation is opening an exhibit on the sixth floor to explain why President Kennedy came to Dallas, to describe the assassination, and to discuss the controversy and official investigations that followed.



President and Mrs. Kennedy arriving at the Dallas Airport. John F. Kennedy Library.

The Historical Foundation is using the murderer's roost to interpret a traumatic event still painful for many people. One might logically question whether this is a proper response to the assassination. It focuses on the president's death, not his life. In fact, the sixth floor exhibit raises questions central to why and how we preserve our past, in Dallas or anywhere. What is appropriate? What part of our past are we obligated or willing to preserve? Are we to keep only the remnants of “safe” history—high-style architecture, abandoned military forts, homes of pioneers, or warehouses to be converted into restaurants and condominiums? Or do we dare preserve what still hurts?

A Controversial Presence

With the assassination, the depository became a troubling and controversial presence—a touch-me-not: tear it down and then regret it, or preserve it and be called tasteless. Initially, there were proposals to destroy the building—in a sense, to salt the earth, to get rid of this shameful site. But the building survived. Now known as the Dallas County Administration Building, it was purchased by the county in 1977 and adapted for use by the Commissioner's Court. This ensured the building's continued use and preservation and led to making the sixth floor available for the exhibit.

In addition to the depository, other features of this historic site have survived, either by chance or by design. Dealey Plaza and its environs have changed remarkably little since 1963—two additional flagpoles, new lampposts, small historical markers describing the assassination, new directional signs for traffic. The trees along the grassy knoll have grown taller. The most striking visual change lies a quarter-mile southwest of the plaza—a towering complex of glass and steel structures built in the 1970s.

One block east of the plaza, but not visible from it, stands a memorial to John Fitzgerald Kennedy, designed by architect Philip Johnson and dedicated in 1970, a tribute by the citizens of Dallas County. Construction of the memorial avoided questions of appropriateness, for it was built on untainted ground and did not involve preserving the scene of the crime. When Kennedy passed near the place where the memorial now stands, his life was open to the future. In the plaza, beneath the south facade of the depository building, his life and presidency were terminated. Preserving the assassination site raises more difficult questions than did building the memorial.

Other Sites, Other Responses

Response to other assassination sites indicates that this preservation effort in Dallas is not altogether unique. The closest parallel is Ford's Theater in Washington, D.C., where John Wilkes Booth shot President Abraham Lincoln on April 14, 1865. Because of public objections, Ford's Theater did not reopen after the assassination. The federal government soon bought the building, converted its interior to office and storage space, then later used it as a museum of Lincoln's life and times. Literature of the nineteenth century refers to the building as "sacred"—there the Great Emancipator was slain.

Today, Ford's Theater is a designated national historic site, open to the public. Ironically, plans to restore the building's interior to a theater were underway during the Kennedy administration. The stage setting in the rebuilt theater (com-

pleted in 1968) is for Act II, Scene ii of "Our American Cousin," in progress when Lincoln was shot. Based on Matthew Brady photographs and other reliable information, this accurate restoration includes the presidential box, furnished and decorated as it was on the night of the assassination. Just as the sixth floor exhibit is not a memorial to Lee Harvey Oswald, Ford's Theater is not a memorial to John Wilkes Booth—rather, it recalls a president's martyrdom and preserves the historic setting.

In Memphis, Tennessee, the Lorraine Motel, where Martin Luther King, Jr., was assassinated in 1968, is preserved through a joint effort of state and local governments and the private sector. The motel complex will be converted into a museum on the civil rights movement. But in Los Angeles, the kitchen area of the Ambassador Hotel, where Robert Kennedy was shot that same year, is both inaccessible to the public and subject to the rush of daily use, making it unsuitable to become a memorial site.

These responses indicate that the stature and public personality of the individual assassinated—and the circumstances of the assassination, including its *setting*—influence whether the public will maintain interest in a site. When President Kennedy was killed, Dealey Plaza was already a memorial area, a low-keyed monumental gateway to downtown. The plaza's colonnades and park-like setting commemorate those who helped establish and build the city of Dallas. Further memorialization is compatible with the area's original purpose.

Since the assassination, people have wanted to visit the site—the place where it happened. They come individually



With President Kennedy's assassination on November 22, 1963, the Texas School Book Depository suddenly became an infamous landmark. This photograph of the building was taken the afternoon of the assassination. Dallas County Historical Foundation.

or by busloads to walk about the plaza's grassy knoll and white colonnades and read the historical markers. Invariably, they point toward the sixth floor window and the triple underpass.

A "Return" Visit

They visit this place for many reasons. Some are simply curious, attracted by the macabre and the sensational aspects of the assassination. But others come in an effort to understand, to comprehend what happened. Many come in an act of solemn remembrance—seeking a kind of reconciliation. Essentially they *return*, because they already know the site well from television and newspaper reports and historical accounts. It is almost too familiar. The site is a compelling yet terrible magnet. And for many, to go there

is to wish there were no reason to go there—in a sense, to wish it away.

To preserve sites of recent, disturbing history—events not yet drained of their emotional intensity—requires courage and foresight. The exhibit on the sixth floor of the School Book Depository is an appropriate use of this place, one that confronts this tragic event and acknowledges its lasting historical importance to this nation. The exhibit is not a celebration of history; rather, it is a recognition of history and an attempt to understand it.

Preserving sites of tragic history is essentially an elegiac process. The historic setting in Dallas will always abide with memory of the assassination—and the enduring regret that it ever happened. ♦

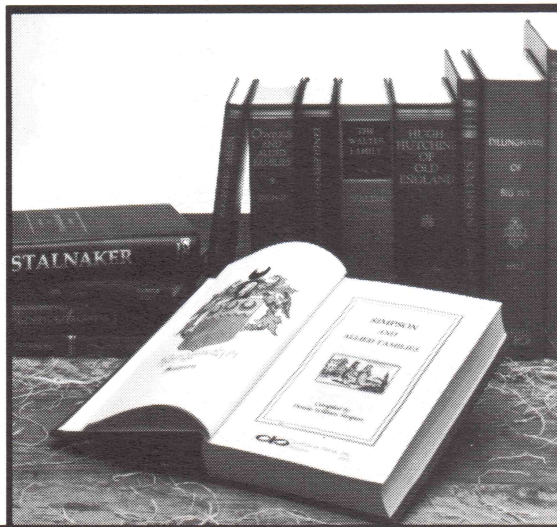
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IN MY OPINION

Aggressive Resource Planning

by Ronald Lee Fleming

Editor's note: *This article was originally sent in February 1988 in the form of a memorandum to Valerie Talmadge, executive director of the Massachusetts Historical Commission. HISTORY NEWS has chosen to reprint it in the hope that it might spark debate about more aggressive roles for other state preservation commissions.*

THE PRIMARY ISSUE WE MUST ADDRESS is the most effective means of conserving the historic resources of a state under developmental seige. As well all know, this is a dramatic time of development, and our state's fragile resources are not being protected by any overall system of strategic planning. Although I have roamed through various planning documents, I don't discover a clear sense of priorities. Perhaps this is because the state commission does not see as its duty the determination that some things are more important to conserve than others. I have even been told that it is "elitist" to rank things. However, I think such comments may obscure a larger point, which is that with limited resources to spend and the need to satisfy widespread demand, it may not seem very important to identify priorities. However, with the considerable resources for the conservation of land that will be spent under the \$500 million bond issue just passed by the legislature, as well as aggressive programs in other state agencies, perhaps this approach should be re-examined.

A Holistic Approach

What I am talking about entails aggressive and multidisciplinary resource planning that includes land-use strategies, interpretation, education, and enhancement. Such planning is based on the understanding that aesthetic appeal is part of a holistic approach that can broaden the constituency for historic preservation of individual properties. Indeed, new initiatives would depend upon extensive collaboration with other state agencies and support from foundations. Our failure to seek support from private resources has crimped new initiatives that might go beyond the traditional objectives of documenting historic sites, awarding funds for planning surveys, restoring particular buildings, and reviewing projects by other state agencies.

Given the larger reality of the state's changing condition, I think the new initiatives that follow are important. That reality includes enormous growth pressure, inadequate and insignificant planning capabilities available in most small communities, the absence of strategic coordination or active planning at the state level, and the tradition of a limited state preservation role. I hope these ideas might set some new directions for the state preservation commission.

1. *Setting priorities for land acquisition.* Though we have discussed the idea of "green belting" certain historic towns whose values are in part defined

by their relationship to the existing countryside, there is no holistic strategy for conserving their special sense of identity. The Society for the Protection of New Hampshire Forests recently undertook a new project to collate various pieces of open space already under the protection of private or public agencies with other, unprotected spaces that should be included in order to achieve overall planning objectives related to linkage, access, and scenic values. Why can't our state historical commission do the same? We could, at least, identify properties that should be protected from the point of view of conservation of historic landscape and townscape. Single-purpose thinking, as opposed to an overall strategy, appears to drive various state agencies to acquire land for watershed values, wildlife, and agriculture. Let us set priorities and articulate them in a dramatic way so that, at least, some available resources can be spent to achieve them.

2. *Effective advocacy with other state departments for funds to interpret and enhance historic townscapes.* Though various programs have been effective in enhancing certain communities, perhaps we could suggest Main Street projects for towns with the highest concentration of documented resources, historic districts, or areas eligible for historic districting. In addition, we might advocate broad objectives, such as entry enhancement, ungraded sig-



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nage systems, underground placement of wires, planting of trees, acquisition of key open spaces, as well as facade work and development of visitor interpretation centers.

3. *Statewide curriculum for the built environment.* The tentative and extremely limited efforts at environmental education now underway at a handful of local historical commissions stand as strong evidence of the need for a more comprehensive approach. Clearly, we cannot wait for each local commission to develop such a program, just as we cannot wait for local commissions to nominate eligible properties to a state register.

A statewide model developed in collaboration with the State Department of Education would be much more efficient. Certainly, we can examine relevant activities in other parts of the country, as well as available publications on the subject. There is a great need for us to become advocates in this area. With a comparatively small amount of seed money, we could structure a course and encourage its adoption through the department of education.

4. *A more comprehensive awards program.* Our awards program seems anchored around existing grant programs, such as those for good planning, good rehabilitation, or restoration projects. Why not also give awards based on larger issues of civic design, such as the effective implementation of design guidelines for neighborhoods and cities or examples of in-fill architecture that respect existing contents? Awards might also be given to the community that does the most to respect the character of its existing skyline or that makes the most effective use of open space to define an existing townscape. And why not build incentives for better behavior by using awards to identify the oil company or fast-food chain each year that does the most to respect design guidelines? Right now our awards program is designed to award

the believers, not to change public opinion.

We might also nourish critics with an award for the best piece of urban-design criticism relating to a historic environment and perhaps even reprint these pieces in our newsletter. An advocacy award for those who have done the most to change a mind set during the year might encourage individuals or groups. Another way of building relationships and constituencies might be recognition of a civil servant in another state department who has been the most effective in advancing the preservation flag.

5. *State review of development adjacent to National Landmark Districts.* Many sites designated as national landmarks are individual buildings, but a few are districts, such as the New Bedford Waterfront and Historic Deerfield Village. Inappropriate development near these sites can substantially diminish their quality and, indeed, can destroy the very qualities that give them national importance. Where the state commission finds the local zoning and design review inadequate for their protection, the state commission should be given the authority to take over this permitting power.

The Jujitsu Tactic

The important thing is for us to measure not only our own resources against the real problems the state is facing, but to assess realistically our capacity to use the leverage of other agencies. Thus, whatever political and financial constraints we face might be overcome through the *jujitsu* of effective use of the resources of other agencies to achieve ends that will benefit us all. ♦

Ronald Lee Fleming serves as an appointee of the governor to the Massachusetts Historical Commission.



FIELD REPORT

For the Administrator: *A Way of Holding the Dove*

by Lynda Bourque Moss

IT HAS HAPPENED TO MANY OF US. You entered the museum profession several years ago. Enthusiastically, with a tremendous amount of energy, fresh ideas instilled by academe, you began the climb up the levels of positions within the profession. Once a newcomer, you have now found yourself far from what originally inspired you. You are in a pivotal position. And the word "manage" enters your museum vocabulary.

Manage, management: concepts far from the language of artifacts, research, archives, exhibits, or programs. Webster's Dictionary defines "to manage" as "to control the movement or behavior of; to have charge of; to direct; to succeed in accomplishing; to carry on business; to contrive to get along." All aspirations of dedicated museum professionals. But how do you maintain a balance between the spark that kindled your interest in museums and management?

The curriculum statement for the tenth annual Museum Management Institute (MMI) defined "management" as "an artful process, the process by which worthwhile things are done in an organizational setting." An example that MMI faculty used to illustrate this concept of management

is a definition related by Tommy Lasorda of the Los Angeles Dodgers: "Managing is like holding a dove in your hand. Squeeze too hard and you'll kill it; not hard enough and it flies away."

What is the Museum Management Institute? Administered by the American Federation of Arts, supported by the J. Paul Getty Trust, MMI is a four-week residency program for middle- to senior-level museum professionals in management positions. Specifically, MMI is a unique program addressing a common situation that transcends disciplines. Whether the museum is a history museum, an art museum, a science museum, a children's museum, or a historic house, there are individuals on the staff who are responsible for the management of the institution and who have had little training in the art of management.

By dealing with a group of people from many disciplines, the MMI faculty creates an atmosphere in which questions rather than answers are offered. The vocabulary, the climate of the class, encompasses the world of business. This is another subtle emphasis of MMI. In the museum profession—in today's economy—with more and more pressure for limited funds in the public and pri-

vate sectors, professionals are finding themselves dealing with marketing, complicated financial issues, legal matters, and other challenging questions. These are all interwoven and may appear to be contrary to traditional museum thinking.

However, by learning the processes in which marketing studies are designed, financial planning is developed, or legal issues are analyzed, museum professionals gain an understanding and a commonality with professionals in other disciplines. Better communication and understanding between museums and businesses and corporations in the private sector is possible. A positive impact on the relationship between museum management and individuals on the governing board may also be realized.

Tangible results of MMI are the accumulation of pounds of notes, case studies, and text books. Material such as "Managing with Impact: Developing a Leadership Style" by Harvard Business School faculty member Linda Hill, "Vincible Ignorance: Museums and the Law" by Stephen E. Weil, or Stanford Business School faculty member David Bradford's hand-outs on team building and group dynamics all provide food for thought. Another MMI faculty member, Kent Chabotar states in his cur-

riculum guide concerning financial management, "The course aims at making participants better managers and consumers of financial information rather than budget officers or accountants."

The classes are fast-paced and progressively relate to one another. At times, "overwhelming" is the most accurate term to describe the curriculum. What is provided is an incredible base of information that will assist each participant in charting his or her own course upon returning home. Clear philosophies, working climates that foster and encourage creative and self-directed staff, supportive frameworks within the structure of the museum, including the governing board, are brought forth through readings, lectures, and participatory exercises.

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If you were to ask each participant in MMI exactly what he or she learned, the answers would be as diverse as the participants and the institutions they represent. What pulls everyone together is the vision they have developed and nurtured—the spark that brought everyone to the museum profession. As Philip

Nowlen, MMI director, suggests, the visioning process is a personal thing that we keep in our back pocket and occasionally pull out as a guide or map. And although a vision is personal, it is also one of the most dynamic management tools.

There are the intangible results of MMI—a collection of management tools, a set of lenses to look through that will assist in decision making; concepts that will serve as a base for museum managers throughout their careers. Just as the formal education and background has kindled the spark that brought us to this profession, the Museum Management Institute offers professionals in whatever discipline—history, art, or science—a means of gaining self-confidence to see management as an evolving set of skills and experiences, as "a way of holding the dove." ♦

Lynda Bourque Moss, director of the Western Heritage Center in Billings, Montana, is a graduate of the MMI class of 1988. The Museum Management Institute is one of seven operating entities of the J. Paul Getty Trust, administered by the American Federation of Arts. For more information or to request an application and brochure, please write or call Ricki Lederman, MMI Administrative Coordinator, The American Federation of Arts, 270 Sutter Street, San Francisco, California 94108, (415) 392-9222.

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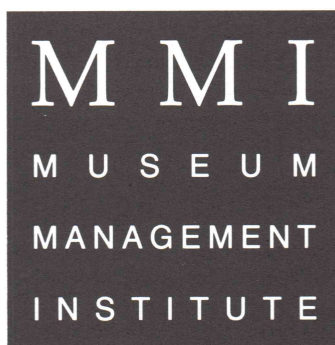
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Janet L. Schwab

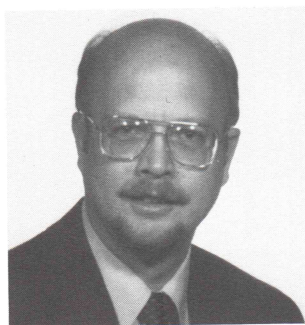
Director of Public Relations, Assistant to the President, Carnegie Institute, Carnegie Library of Pittsburgh, Pittsburgh, Pennsylvania

Most Challenging Part of My Job

The most difficult aspect of serving as Director of Public Programs and Services at the Carnegie is that I work for three museums (art, natural history, science), a library, and a performing arts center. Given such a broad agenda, my greatest challenge is to maximize limited resources by developing and managing my time very carefully in order to be able to perform and lead my staff effectively.

Most Valuable Aspect of MMI

Two things always remain with me about MMI: gaining a fresh understanding of what management really means and acquiring an individual support network of museum professionals around the country. The program provided an excellent opportunity to step back in order to see how all the day-to-day components of the operation fit together. I was able to talk openly about sensitive issues and be assured of a good sounding board and a diversity of views from colleagues who face similar problems. Best of all, their advice continued beyond the summer. I greatly respect their guidance. I will always value the friendships I developed with them during MMI.



David Bradford

Lecturer, Graduate School of Business, Stanford University, Stanford, California

Most Challenging Part of Instructing at MMI

More than most groups I teach, there is a deep-seated mistrust of business and management issues among the MMI participants. I believe the most challenging part of MMI for me is to assist the participants in alleviating these feelings by presenting the usefulness of managerial disciplines.

Most Valuable Aspect of MMI

I believe the program helps participants control two very important tensions: accomplishing the goal of museums and assuring that the goals are reached in a financially prudent and efficient manner. Recognizing these tensions and responding to them is the most valuable aspect of MMI.

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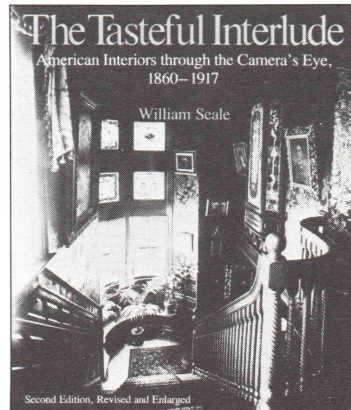
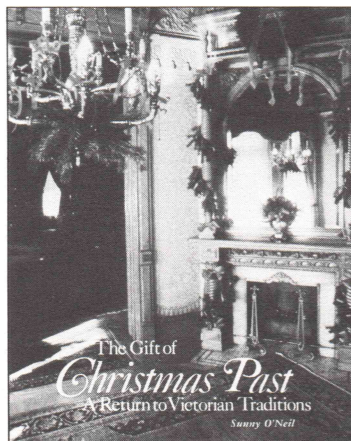


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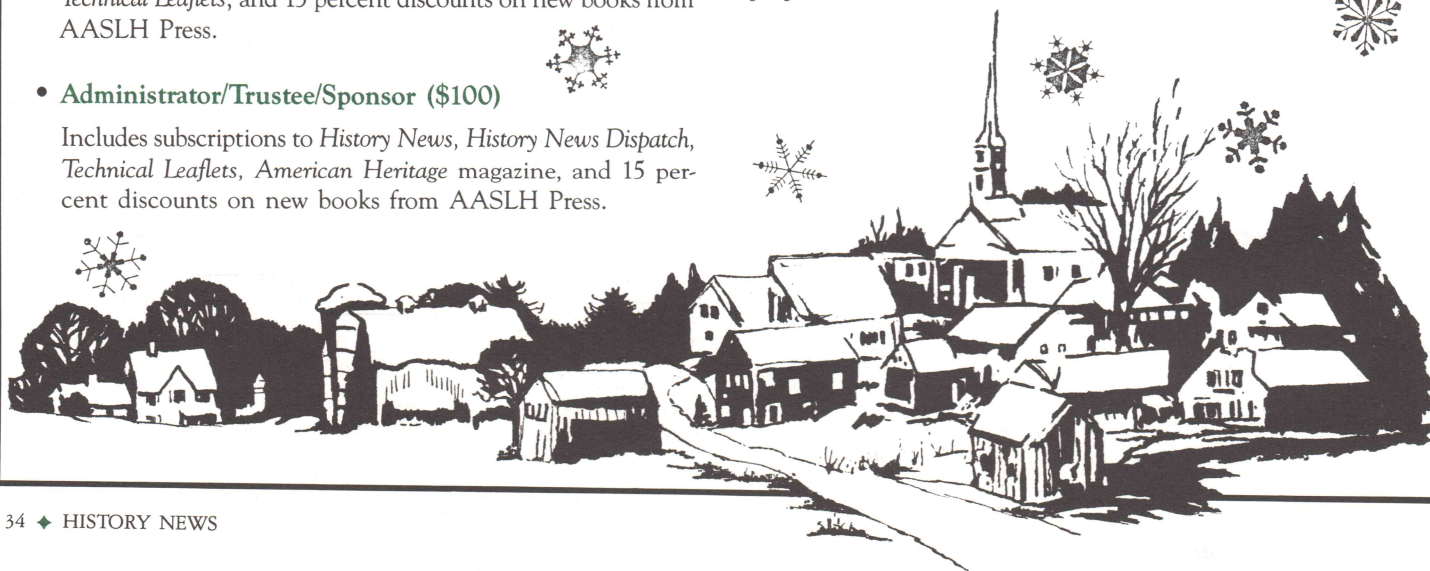
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